Moral panics and miscarriages of justice

An analysis of alleged wrongful convictions in child sexual abuse cases in Australia

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MORAL PANICS AND MISCARRIAGES OF JUSTICE

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ABSTRACT

Miscarriages of justice often arise when there is heightened media attention and public or political pressure on police to act quickly in major crime cases. This is evidenced in a number of high profile cases both within Australia and overseas. The classic antipodean case — where the media and public attention was 'frenzied' — is that of Lindy Chamberlain whose baby Azaria was taken by a dingo near Uluru in the early 1980s. Often, such heightened attention occurs where the victim is attractive, innocent and identifiable. Thus, this kind of media push is most likely with child victims in general. Child sexual abuse has been a major media concern for over two decades and interest in it does not appear to be abating. Indeed with new forms of institutional abuse being uncovered the media interest is sustained. This paper examines two cases of alleged miscarriages of justice that have taken place in Queensland in the mid to late 1990s in this climate of heightened public focus on child sex abuse. The cases are analysed in detail to (a) examine the justice processes to determine where and why they might be considered wrongful convictions and (b) to discern how the media or public attention might have wrought undue or erroneous focus on the cases. The analysis attempts to address how media moral panics might impact on these wrongful outcomes. This study is exploratory as it will be the basis for a larger analysis of over 100 cases in the state. MORE HERE ABOUT THE FINDINGS The findings are threefold: 'salemism' which defines an assumption of guilt in the face of little or no evidence just because of the category or classification of the crime (much like the witches of Salem); incompetent and lazy policing (Wilson 1991); and poor defence practices especially the rule in Queensland of giving up the right of last address to the jury (recommend to change this rule).

INTRODUCTION

Rationale

This paper examines miscarriages of justice in the contentious offence category of child sexual abuse. It must be first noted that this paper, and the research on which it is based, is entirely exploratory because it forms the basis for a larger project for which we intend to seek external research funding to examine over 100 cases of alleged wrongful convictions for child sexual abuse charges. The aims of the paper primarily include:

- A detailed examination of two cases of alleged wrongful convictions for child sexual abuse to discern potential patterns that may have been causal in creating the miscarriage, drawing on Wilson's (1991) article that found five factors are highly implicated. While most of the literature in the miscarriages of justice area deals with homicide the focus here is on the contentious area of child sexual abuse.
- An examination of the offence category of child sexual abuse because it is so contentious and to explore links with a generalised public and media moral panic regarding such offending against children with the view to seeing if this impacts on the potential for greater miscarriages of justice for this offence category.
- An exploration of relatively low-profile cases/crimes (only two media articles about these two cases) because much of the research literature in this area, especially in Australia, tends to deal with high-profile cases.

Much of the focus on miscarriages has been on serious, often death row cases in the USA (Harmon 2001). Whereas it has been suggested by many (Roberts 2003, Wilson 1991) that wrongful convictions are likely to be far higher for less serious crimes. While there is high public concern expressed about child sexual abuse, in this paper we will be presenting details

of two CSA cases which are relatively low level yet for which the two men convicted have served significant terms of imprisonment (5 years). It should be noted however that both of these cases have not been overturned and so we continue to refer to them as 'alleged' miscarriages of justice. Thus, low-profile cases, not high-profile ones, have been deliberately selected with the view that neither has received massive media attention (only two articles). It has been shown that jurors, by and large, are able to divorce their deliberations from sensationalised media coverage (Chesterman et al 2001), but it there is virtually no empirical evidence about the impact of sensationalised media on jury decision-making when it is the crime category, rather than a specific offence or offender, that has received heightened (and in this case sustained) media coverage for over two decades.

As has been shown there are many egregious miscarriages that have resulted in the child sexual abuse area especially in the USA in the 1980s where there were wild claims of sex parties, aliens attending and physical assaults for which there was no evidence (Rabinowitz 2003). The most famous McMartin pre-school case in the USA was one that demonstrated the capacity for wrongful prosecutions (De Young 2003) where the satanic panic surrounding day care centres spread across the country destroying families and communities, yielding scores of convictions and the subsequent overturning of these wrongful convictions. The charges were fanciful of 'blood-drinking, cannibalism, and human sacrifices' for which there was no 'corroborating and material evidence' (De Young 2003, 161).

One well known civil libertarian lawyer in Queensland (Terry O'Gorman) is reported as saying that 'with the current almost feverish level of debate about child sexual abuse in this country the old adage that it is better to let nine guilty men go free in order to prevent one

innocent man being convicted … that's a philosophy that very few now subscribe to in the prosecution of child sex allegations, particularly historical child sex allegations' (Stapelberg 2003, 5) — although the Blackstone adage is actually 10 guilty men which just goes to show that you cannot believe all that is read in the print media.

A Commencing Caveat

It always seems necessary when discussing child sexual abuse to include exhortations that: one is not an apologist for pedophiles; nor is one necessarily advocating lesser punishments for child sex offenders; nor is one attempting to argue that all allegations by children are false. Clearly, there are many rightful convictions in the child sexual abuse area and it is a topic that is most worthy of criminological, legal, political and media attention given that it has remained hidden for so long. It is also important to acknowledge that those cases which come to public or juridical attention are likely to be the tip of the iceberg, for many cases go unreported (Hood and Boltje 1998; Ronken and Lincoln 2001). Then, even when reported, there are many difficulties in investigation practices, in getting to trial and in securing convictions. For example, it is relatively well-documented that child sex offence cases are difficult to prosecute, with convictions on average 10% lower than for all other offences combined (Cossins 2001). However, because of the emotive nature of discussions in this area too few cases have examined the other side where convictions are wrongful, the evidence is weak and the investigation, prosecution and defence are inadequate. So while this (almost mandatory) caveat/apology is provided it is imperative to support the continued study of wrongful convictions in child sexual abuse cases. This is especially so because other forms of child abuse get buried by the over-concentration of sexual matters of a low order (touching,

fondling) whereas serious levels of physical abuse and neglect go unreported and unacted upon (see Phipps 1999 for a discussion of these difficulties in the child homicide area).

Overview of Paper

First, these two cases of alleged wrongful convictions in child sexual abuse cases will be presented in summary form to briefly provide the salient points. Then there will be an overview of the aspects of these two cases that denote them being wrongful convictions. The second part of the paper looks at three issues simultaneously: child sexual abuse, media influence on miscarriages and moral panics especially in child sex cases. Finally, the three main findings from this exploratory analysis are presented, along with suggestions for expanding this research in the future to encompass all 100+ cases in Queensland.

TWO CASE STUDIES

Describe Ryan and then McCreery case (max of one page each)

Give summary para that compares and contrasts them (salient features)

Then why do we think each of these are potential MOJs

McCreery Case

Points I would raise here to indicate a potential miscarriages include the fact that he was convicted by jury of only 6 of 10 charges (now this is not conclusive but does show some doubt on the part of the jury either about the veracity of the claims against him or in some ways perhaps the trivial nature of the claims against him). Would also note the background factors that you have raised (mother was experiencing problems [bad back and fybromyalgia] and allegedly made advances to McCreery which he rejected so he is claiming some revenge

motive), plus daughter also has some problems and is quite demanding so this may be attention-seeking, etc. A third point, although delicate, is that these are very minor claims (touching, showing photos, possessing a photo – was she naked or just sleeping?) yes these are a little weird but the heightened focus on child sexual abuse means that such minor cases get caught in the criminal justice web. This is where the Rind et al (1998) article could be used to show that this level of touching by McCreery would be unlikely to cause much personal or social harm although this would be disputed by the Whitfield et al book (2002). Much hinged on McCreery's claim to have been responsible for 10% (give exact quote) to ex-wife, police and others. But this can be explained in more mundane rather than probative terms (he did lead her on, he was affectionate, he did sit her on his lap etc and was overly attentive but he claims this was not sexual but expressive). The daughter had been victimised at age 9 and did she receive counselling etc then – any details of this earlier incident? Is the daughter sexual active – certainly some evidence that she acted in a sexually provocative way towards McCreery and no evidence of the mother discouraging this. The point about the daughter being evaluated as bright but stable (ie no personality probs by psychologists) may well just indicate that she is bright and mature and can seize an opportunity when she sees it (ie attention or whatever through accusing McCreery or perhaps an opportunity to get away from him as mother obviously wanted to retain the relationship).

CHILD SEX ABUSE

Sexual offences against children are seen as particularly heinous because they:

- violate the 'physical and psychological integrity of the young victims';
- often involve 'abuse of trust and power';
- can include direct threats of violence or indirect methods of inducements; and

- because of the 'repetitious and serial nature of the conduct' (Fox 2002, 178).

In recent years 'threats to children have had a good deal of success in the social problems marketplace' (Best 1990, 16) which just says that there is heightened concern when children are the victims of crime, go missing, or whatever and this heightened concern involves public, police as well as media.

Brief summary from the literature (see Ronken & Lincoln as should be enough there) which just makes the point that sex abuse has been one of the major moral panics of the 1980s through to the 2000s (do the McMartin case from the Adler & Adler textbook).

The whole brouhaha surrounding the resignation of Australia's Governor-General in early 2002 is a clear indication of the scale of concern about child sex abuse. The claims again Peter Hollingworth were that he acted negligently about accusations within an Anglican school or that he engaged in a deliberate cover-up (Williams 2002). Other claims, later found to be false, involved Senator Bill Heffernan accusing high court judge Michael Kirby of using his government supplied vehicle to procure the services of youthful male prostitutes (Williams 2002; Patapan 2003). Thus all kinds of child sex abuse allegations reaching to the highest level abounded in Australia in recent years.

One of the problems with child sexual abuse is that it covers such a wide range of human activities from sadistic sexual homicides through incest and genital mutilation to fondling and the display of photographs (Flowers and Thomas 2002). Many cases are decades old and thus it is difficult to have justice served for either party when there are no witnesses and poor recall

and an absolute inability to obtain corroborating evidence for offences that occurred 10, 20 or 30 years earlier (REF 200X). In addition, a number of cases come to light following suspect therapeutic interventions, such as in the case of 'false memory syndrome' and again these cases are often decades old, difficult to prove, invariably involve close family members, and the complainant is someone who is already suffering in some way (REF 200X).

Generally the debate around child sexual abuse is its potential for long-term and serious harm. One controversial study suggests that the long-term consequences, especially for males, are not as harmful nor as extensive as most believe (Rind et al 1998).

The corollary however is also true in that there is fairly clear evidence that the case for 'false memory syndrome' has been proved (ie generally it is false) but evidence to support a witch-hunt, a moral panic and the fact that csa does not cause long term and serious consequences are still very much in dispute (see Whitfield et al 2001).

The problem is often in determining whether abuse has taken place. Southall et al (2003, 343) for example recommend that police should be involved for they are 'less easy to intimidate, … are likely to be more cynical of statement made by abusers. They are used to dealing with the inevitable complaints that arise from suspects and are not inhibited by rules concerning confidentiality that can so interfere with evidence gathering'.

CATEGORISING THE MISCARRIAGES

It is difficult to categorise miscarriages of justice as they can be allocated to a number of classificatory systems. One broad categorisation might involve the following six types:

1. wrongful person (crime has occurred but innocent person accused or convicted)
2. wrongful charge (where charges may be inflated eg multiple charges against indigenous Australians)
3. wrongful sentence (where penalty appears excessive)
4. wrongful procedures (where the processes followed are incorrect or poor meaning that justice and fairness have not prevailed)
5. wrongful accusation (where the crime has not occurred or has been inflated)
6. wrongful acquittal (where the processes have failed to convict eg Kennedy/Carroll case in Queensland)

We suggest that miscarriages of justice relating to child sexual abuse are most likely to occur in the more murkier areas of defining whether or not an offence has taken place (#5 — wrongful accusation — in the above list). This is especially so given that heightened media attention is likely to have a powerful impact on police and prosecutors who make decisions about whether a set of behaviours warrants being labelled as a crime or at least can be made to fit the definitions under the criminal code. That an atmosphere of moral panic is most likely to be influential at the front end of the criminal justice process is not surprising: children do not usually have wide circles of acquaintances; they are usually within the home; they most often associate with family and close friends; and so in situations where it is confirmed that some kind of sexual misconduct or assault has occurred then it is usually not difficult to narrow down the suspect pool. (Of course this also occurs with adult victims of sexual offences, but is more likely with children and younger adolescents.) So this reflects the opportunity structure for child sexual assault and the potential for it to be impacted upon by moral panic atmosphere and in turn to lead to miscarriages of justice.

However, false allegations are particularly difficult in sexual assault matters and of course there are many reasons why an allegation of sexual misconduct (minor or serious) may fail to achieve a conviction (Kanin 1994). So it does not follow that all accusations of sexual misconduct that do not proceed to conviction are false (#6 — wrongful acquittal — in list above). They may 'fail' because of lack of corroborating evidence or where the victim does not cooperate with the police (Kanin 1994), and indeed this need for corroboration (while a cornerstone of adversarial justice) has been critically questioned in regard to child sexual abuse cases (Cossins 2001; Hey 2003).

The two cases presented here (David and William) are particular types of miscarriages of justice. They are not ones where the wrong person has been convicted and imprisoned for a crime; rather they involve doubts about the crime, so they fall into a special category (#5 on the list). It is fair to state that in David's case it is suspected that no offences were committed against either defendant and therefore these constitute cases of 'victims without crimes' and thus are really wrongful or false allegations (Poveda 2001). In William's case it is probably fair to state that there may have been some unwanted behaviour on the part of the accused but that this has been embellished, with the result that low-level deviant behaviour has been elevated to a criminal offence.

If we then turn to the typologies regarding reasons (or causal factors) implicated in miscarriages of justice, we find considerable overlap in the categorisations. For example, Wilson found five factors: police incompetence (lazy or inexperienced); police overzealousness (trying to 'fit up' the accused because of belief in their guilt); the nature of

evidence (conflicting experts, circumstantial only, other confessions disregarded); use of police or prison informers; and media pressure for quick action (Wilson 1991). Other sets of factors, although these generally arise in death penalty cases from the USA are: poor legal defence; limited amount of evidence (eg no eyewitnesses or other corroboration); perjury (relates to complainants but also to police and prison informers); police misconduct (particular when high public and media pressure); and racial discrimination (Harmon 2001; Huff 2002).

Where accusations are false the empirical evidence indicates that they are made for one (or more) of three main reasons: 'an alibi, a means of gaining revenge, and a platform for seeking attention/sympathy' (Kanin 1994). Similarly, Rabinowitz (2003) in her examination of high-profile US cases from the 1980s proffered: 'overzealous police and prosecutors whose leading interviews of children prompted many outrageous accusations; professional child-abuse experts willing, even eager to testify for the state; the rapacious media; a public with a boundless appetite for the salacious; incompetent public defenders; and the whole notion that children are innocent and must be believed' (*Kirkus Reviews* 2003, 216; see also Huff 2002).

One aspect that has received scant attention in these typologies is the role of the juror/juries in miscarriages. It is addressed tangentially under the heading of complex forensic evidence and whether or not lay persons on a jury are able to comprehend confusing and technical evidence. But there are many other reasons for a jury to be more heavily implicated in miscarriages. There is little research evidence overall (given restrictions on access to conduct juror research in Australia) and what is available tends to be drawn from the USA where there are significant differences in how juries are selected and in how they operate. It does appear

that there is some empirical support to the view that jurors lack comprehension of evidence and courtroom procedures. For example in some studies jurors thought that circumstantial evidence possessed no probative value. The weight of empirical evidence however appears to imply that juries fail in their abilities to comprehend where the judicial instructions are confused (Cronan 2002). However, the anecdotal evidence in Australia is that most times juries do 'get it right' (Findlay et al 1999), and tend not to be swayed by prejudicial and sensationalised media coverage (Chesterman et al 2001).

HAVE PARA THAT STATES WHAT JURIES DID FOR THESE TWO CASES

In the (106) cases from Citizens Against False Sexual Abuse Allegations (see McCartney et al 2003) that we have reviewed to date and that will form the basis of our future study, seven main causal factors appear to be emerging:

1. victim-tainting
2. police ineptitude
3. jury default decision
4. witness disempowerment
5. defence ineptitude
6. abrogation of responsibilities by justice personnel
7. mediaisation (sensationalism and moral panic)

MORAL PANIC STUFF

The concept of 'moral panic' was bequeathed to us by Stanley Cohen (1972) to describe heightened and emotive public focus on an issue, that involved claims-makers and deviance amplification, to arrive at a situation where 'something must be done' and thus there is increased social control attached to this form of activity. It applies to less recent human

endeavours such as the witch-hunts in Europe and the USA of earlier centuries but most often to the law-and-order campaigns generally associated with mass media of the 20th century (Goode & Ben-Yehuda 1994). It has been well documented here in the UK with Cohen (1972) focussing on youth violence among 'mods' and rockers'; Cohen and Rock (1970) examining the emergence of 'teddy boys' as social threats; or Hall et al (1978) studying the new crime wave of 'mugging' in London. But has also been empirically captured in the USA (crimes against the elderly in NYC by Fishman 1980), Canada (attacks against women REF FROM M&C) and certainly in Australia (Aboriginal youth by Sercombe 1995 or ethnic gangs in Sydney REF).

The social construction of CSA has been around for about 25 years but actually documents three such peaks throughout the last century – 1890 to 1934 the 'progressive era', 1935 to 1957 'the age of the sex psychopath' and 1976 to 1986 'the child abuse revolution' according to Jenkins (1998). This last phase continues into the present with paedophile rings and internet pornography or chatroom being the most recent manifestations.

Much of the process follows the typical moral panic/crime wave with some semblance of truth (ie isolated events), then claims-makers taking on the role as advocates, the media amplifying the issue and then law-makers and politicians responding to the 'something must be done about this' by introducing often draconian legislation (such as sex offender notification laws, preventive or extended notification for sex offenders) all of which do not apply to murderers (see Cohen 1972). The semblance of truth is that there is often a horrendous child sex murder that kicks off the moral panic and this is sensationalised by the media but filters down to all kinds of 'innocuous' behaviours that are deemed to have some

sexual overtones. Thus, a 'sex offender, however non-violent his crime, was felt to cause a far more immediate menace than the mugger, robber, murderer, confidence trickster, or corporate polluter, who were not subject to like restrictions' (Jenkins 1998, 200). The claims-makers (social workers, psychiatrists, psychologists and criminologists) benefit, as do politicians who can take a tough law and order stance to impress their constituencies, and of course the media can benefit from increased circulations or ratings with salacious material and cases. Jenkins 91998) predicts that this current CSA moral panic will endure for some time as it has become entrenched (within those claims-maker groups above) – although my view is that it may get overtaken by the 'greater evil' of terrorism.

It is suggested that 'wrongful conviction is on the rise because the protections against it have been eroded by the pursuit of devils – drug dealers, child molesters, environmental polluters, white-collar criminals, and terrorists – all of whom must be rounded up at all cost' (Roberts 2003, 569).

Much of the empirical evidence for moral panics is about specific crime categories over defined geographic locations and specified time periods and involves accounting for 'its timing, target and trigger, content, spread, and denouement' (De Young 2003, 161). But in this case we have not yet done extensive studies to 'prove' a case of moral panic despite our collection of some very superficial data on media articles in the Brisbane metropolitan daily broadsheet (Courier Mail) from the 1980s. Our brief here is not to demonstrate that there has been moral panic with a trigger and a denouement, for our view is that there has been heightened sensitivity to CSA that has taken the form of a media moral panic, but it has had many peaks and that it is still ongoing. Thus unlike the 'crime' of home invasion for example

(see Wever & Lincoln) there has not been a discernible beginning and end to this moral panic. We have almost taken-as-read that the moral panic surrounding CSA began in the early 1980s (as witnessed via the McMartin Preschool case) and has continued unabated ever since. Indeed there is evidence for this (Wilcynski & ??? article 1999). We do however intend to explore in more depth the media data in our major follow up study based on this present exploratory one so that the moral panic surrounding CSA and how it may impact on MOJs can be refined.

CONCLUSIONS

There is now a greater focus in the media on sexual offenders and victims but despite the greater levels of media representation there still remains a cloak of secrecy (Flowers and Thomas 2001) and much inconsistency about how the issue is treated (Southall et al 2003). 'On the one hand, and often with only one side of the story, the media parade parents who claim to have been falsely accused. On the other, they heavily criticise frontline workers who make mistakes and they generally fail to consider why these mistakes have occurred (usually as a result of impossible workloads and threats from the abuser)' (Southall et al 2003, 343).

The media have an important role to play and our paper should not be seen as total lampooning of media efforts, nor to lay all the blame at the feet of the media for various moral panics. Indeed the media have served as watchdog on justice processes (corrupt cops etc) and it (not monolithic) has been involved in many major miscarriages cases. However, we would like to see more of this media focus on wrongful convictions, and not just in serious cases nor ones where stunning DNA evidence might be involved (Nobles & Schiff 2000).

It is difficult to estimate levels of miscarriages of justice (Poveda 2001) but we take here as our benchmark the figure of 0.5% (Huff et al 1996), then go on to note that we have 106 of them already that will be in our larger study. Given that child abuse notifications in Queensland have increased from just over 19,000 in 1999 to over 27,500 in 2001 reflecting a 29% increase nation-wide means that there could be up to 700 miscarriages of justice cases in Australia for the 2001-02 year (AIHW 2002).

The police interview plays a critical role and can be as important as DNA evidence in exonerating a wrongfully accused person (Cassell 1998).

Re Salemism

Mike Cox, the founder of Citizens Against False Sexual Abuse Allegations (CAFSAA) is reported as saying that 'instead of being burnt at the stake their lives are destroyed by being dragged before the courts on absolutely ridiculous charges' (Stapelberg 2003, 1).

With respect to the police 'the primary purpose of interrogation in common law countries is the extraction of an admission of guilt. Thereafter, such admissions become an important element of proof in the prosecution case' (Westling and Waye 1998, 494).

An abiding problem in this area is trying to make decisions about who is guilty and who is innocent, and this is akin to a search for 'the truth' (Cassell 1998). Innocence, like beauty, is in the eye of the beholder, and despite the rigors of our adversarial system we almost never arrive at a truth and certainly can never prove innocence.

In the present study, while we have no direct evidence, we are suggesting that in situations with heightened sensitivities to particular offence categories then there may be scope for juror to make wrongful adjudications.

Some conclusions that we can draw might be the following. We only need 3-5 of them as generalised points. Remember that we can use dot or enumerated points given that this is an oral presentation.

1. One purpose of this present study was exploratory. It was designed to develop a methodology with which to analyse cases of alleged miscarriages of justice where child sex abuse is concerned. This is because we intend to do further research on this topic utilising cases (over 50) brought to our attention through the CAFSA – a vocal and the only volunteer group in our state (Qld) that has been addressing this issue. Therefore we think that the 50+ cases they have now gathered are quite representative, if not indeed representing almost the entire population of recent MOJs for sexual offences relating to child victims. The present exploratory research has yielded several cogent directions for our next study being x, y and z (just give a couple of vague indications).

2. Something here about the MOJ aspect like that we found support for Wilson's examination of miscarriages where it does indeed seem that media pressure can have an impact on the policing aspects; or that police investigations are most likely to be poor when x, y, z. Another major factor that emerges time and time again from MOJ cases in the state of Queensland is that if the defence provide evidence/witnesses then they lose the right of last reply to the jury. This is not the case in most other

jurisdictions in Australia. So there is support for Wilson's finding that poor defence – in most cases in Queensland this translates as no defence – is implicated in an MOJ. While it is conceded that the weight of a trial rests with the prosecution to prove guilt, in these very difficult cases of child sexual abuse it would seem that a defence case to present a solid alternative is often warranted.

3. A more sociological point about the heightened dangers of having more MOJs when there is a media moral panic going on, in this case probably lasting for 20+ year. Our examination of the local mainstream daily newspapers did indeed reveal some evidence of a media-generated moral panic. The most significant factor is that this media awareness has been extensive and covers two decades and is likely not to abate much in the foreseeable future. This makes it very difficult for cases where there is an allegation of MOJ to achieve a satisfactory airing at subsequent tribunals (such as appeal court, to the Attorney-General, or if we should ever get a Criminal Cases Review Commission in Australia). This is because not only does the original investigation, trial and jury decision plus sentencing take place within this media moral panic, but it does not or has not abated and thus it continues to affect the chances of an unsullied hearing. It does seem clear that the potential for miscarriages in the CSA realm are likely to be higher than the guesstimate provided by Huff et al (2XXX) of about half a percent. Of course we are also mindful of the potential for a large proportion of wrongful acquittals in the CSA area as well. These are likely to eventuate because of a similar set of 'causal' factors: poor police investigation, media pressure and so on. In addition there is the large proportion of sex abuse (whether of child or adult victims) that are never reported to justice agencies.

4. In the case of these two cases of alleged MOJ for child sexual abuse offences, we are unable to draw any specific conclusions about whether they are indeed definite MOJs. However, it is likely that x, y and z – whatever we want to say about these two cases in particular and any differences between them. It is important to note that miscarriages do not relate to the sentence – in our two cases both men have served their time and are now released so it is not a case of seeking freedom. However, it is about injustice – and in these two cases the men would like to clear their names and to demonstrate that there has been an error in the system (Roberts 2003).

It is important to look at the nature of the adversarial process and the long history of the common law to seek ways of reforming procedures in child sexual abuse cases for both the protection of the victim and the alleged offender. In particular it has been demonstrated through case analysis that lack of corroboration is typical in child sex abuse cases and yet our current procedures in court can only deal with this via the 'corroboration warning' (Cossins 2001) and so it is time to take a more radical approach to reform such as a special court (akin to drug courts) and a more inquisitorial approach to overcome problems in the investigation aspects.

Not only have these two men (and a proportion of the others) spent their sentences in prison, they have endured emotional and financial strain in going through the adjudication process, and then being shunned by their family, friends, colleagues and finding it difficult to secure work. This occurs for those who are acquitted as well (*The Australian* 17 November 2003), not just those who are wrongfully convicted for the process is damaging to reputations.

The recent allegations of child sexual abuse against American celebrity, Michael Jackson, reflect one type of accusation against a famous person (*The Australian* 13 January 2004). While the singer is certainly eccentric and his behaviour perverse, it will be difficult to tease out the evidence from the media moral panic. This is one reason that we have deliberately selected low-profile cases for our study here.

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